

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

RECEIVED
USDC CLERK, CHARLESTON, SC

2006 JUN 23 P 3:01

Robert Medley, # 251576,) C/A No. 2:06-1136-CMC-RSC
Petitioner,)
vs.) Report and Recommendation
Mr. Douglas Taylor, Warden, R.C.I.;)
State of South Carolina; and)
Henry McMaster, Attorney General for South Carolina,)
Respondents.)

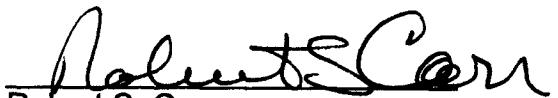
)

This is an action seeking habeas corpus relief under 28 U.S.C. § 2254. This case is before the Court for review of Petitioner's Motion to Dismiss without prejudice. (Entry 13).

Petitioner filed his Motion on June 21, 2006, requesting the Court to dismiss this case without prejudice so that he may pursue his state remedies. Petitioner's request appears to be made in good faith and for good cause.

Accordingly, it is recommended that the United States District Court grant Petitioner's Motion and dismiss this § 2254 habeas corpus case without prejudice. Petitioner's attention is directed to the important notice on the following page.

Respectfully submitted,



Robert S. Carr
United States Magistrate Judge

June 26, 2006
Charleston, South Carolina

Notice of Right to File Objections to Magistrate Judge's "Report and Recommendation"
& The *Serious Consequences* of a Failure to Do So

The parties are hereby notified that any objections to the attached Report and Recommendation (or Order and Recommendation) must be filed within **ten (10) days** of the date of its filing. 28 U.S.C. § 636; Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three days for filing by mail. Fed. R. Civ. P. 6. A magistrate judge makes only a recommendation, and the authority to make a final determination in this case rests with the United States District Judge. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976); *Estrada v. Witkowski*, 816 F. Supp. 408, 410 (D.S.C. 1993).

During the period for filing objections, but not thereafter, a party must file with the Clerk of Court specific, written objections to the Report and Recommendation, if he or she wishes the United States District Judge to consider any objections. Any written objections must *specifically identify* the portions of the Report and Recommendation to which objections are made *and* the basis for such objections. *See Keeler v. Pea*, 782 F. Supp. 42, 43-44 (D.S.C. 1992); *Oliverson v. West Valley City*, 875 F. Supp. 1465, 1467 (D. Utah 1995). Failure to file specific, written objections shall constitute a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the United States District Judge. *See United States v. Schronce*, 727 F.2d 91, 94 & n. 4 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841, 845-847 & nn. 1-3 (4th Cir. 1985). Moreover, if a party files specific objections to a portion of a magistrate judge's Report and Recommendation, but does not file specific objections to other portions of the Report and Recommendation to which he or she did not object. In other words, a party's failure to object to one issue in a magistrate judge's Report and Recommendation precludes that party from subsequently raising that issue on appeal, even if objections are filed on other issues. *See Howard v. Secretary of HHS*, 932 F.2d 505, 508-509 (6th Cir. 1991); *see also Praylow v. Martin*, 761 F.2d 179, 180 n. 1 (4th Cir.) (party precluded from raising on appeal factual issue to which it did not object in the district court), *cert. denied*, 474 U.S. 1009 (1985). In *Howard*, the court stated that general, non-specific objections are *not* sufficient:

A general objection to the entirety of the [magistrate judge's] report has the same effects as would a failure to object. The district court's attention is not focused on any specific issues for review, thereby making the initial reference to the [magistrate judge] useless. * * * This duplication of time and effort wastes judicial resources rather than saving them, and runs contrary to the purposes of the Magistrates Act. * * * We would hardly countenance an appellant's brief simply objecting to the district court's determination without explaining the source of the error.

Accord Lockert v. Faulkner, 843 F.2d 1015, 1017-1019 (7th Cir. 1988), where the court held that the appellant, who proceeded *pro se* in the district court, was barred from raising issues on appeal that he did not specifically raise in his objections to the district court:

Just as a complaint stating only 'I complain' states no claim, an objection stating only 'I object' preserves no issue for review. * * * A district judge should not have to guess what arguments an objecting party depends on when reviewing a [magistrate judge's] report.

See also Branch v. Martin, 886 F.2d 1043, 1046 (8th Cir. 1989) ("no *de novo* review if objections are untimely or general"; which involved a *pro se* litigant); *Goney v. Clark*, 749 F.2d 5, 7 n. 1 (3d Cir. 1984) ("plaintiff's objections lacked the specificity to trigger *de novo* review"). **This notice, hereby, apprises the parties of the consequences of a failure to file specific, written objections.** *See Wright v. Collins*; *Small v. Secretary of HHS*, 892 F.2d 15, 16 (2d Cir. 1989). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections addressed as follows:

Larry W. Propes, Clerk
 United States District Court
 Post Office Box 835
 Charleston, South Carolina 29402